Georgia Auto Pawn *and* Cynthia Johnson. Cases 10–CA–132943 and 10–CA–142161

February 8, 2017

DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On October 21, 2015, Administrative Law Judge William N. Cates issued the attached decision. The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Georgia Auto Pawn, Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(c).

"(c) Within 14 days after service by the Region, post at its Atlanta, Georgia facilities copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by

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[1] There are no exceptions to the judge's finding that the Respondent violated Sec. 8(a)(1) by maintaining certain overly broad rules and policies.

[2] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Board adopts the judge's findings that both the disciplinary warning and discharge of Cynthia Johnson were lawful. With regard to the warning, Member Pearce and Member McFerran note, however, that one of the two stated reasons for the June 17, 2014 warning to Johnson, "failure to follow procedure," referred to Johnson's protected concerted activity of speaking to coworkers about pay increases, and that discipline for such conduct demonstrated animus. They nonetheless agree with the judge's finding that Johnson would have been disciplined for the other stated reason in the warning: her insubordinate behavior towards Area Manager Samantha Murillo during their June 9, 2014 telephone conversation. With regard to the discharge, Member Pearce and Member McFerran do not rely on the judge's finding that the General Counsel failed to prove that Johnson's protected concerted activity was a motivating factor in her discharge. Instead, they agree with the judge's alternative finding that, even assuming the General Counsel met his initial burden, the Respondent proved it would have discharged Johnson for her behavior during the meeting with Regional Manager Larry Smith on July 7, 2014. For these reasons, they adopt the judge's findings that both Johnson's disciplinary warning and her discharge were lawful.

Member Pearce and Member McFerran do not agree with Acting Chairman Miscimarra's protected concerted activity analysis, which they note is not reflective of Board law.

Even if one assumes that Johnson engaged in protected concerted activity, Acting Chairman Miscimarra agrees with his colleagues that the Respondent lawfully disciplined Johnson for insubordination. Accordingly, he finds it unnecessary to reach or pass on the judge's finding that Johnson's conversations with coworkers about performance evaluations and pay increases constituted protected concerted activity. He disagrees, however, with *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995), cited by the judge, in which the Board held that conversations about wages are inherently concerted. As he explained in *Hoodview Vending Co.*, 362 NLRB No. 81, slip op. at 5–7 (2015) (the former Member Miscimarra, dissenting), the notion that conversations about certain subjects are inherently concerted cannot be reconciled with *Meyers Industries*, 281 NLRB 882 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988), in which the Board required that a conversation have an object of group action in order to qualify as concerted activity. *Meyers II* distinguishes between conversations that look toward group action, which are concerted, and mere griping, which is not. In Acting Chairman Miscimarra's view, to deem a conversation inherently concerted based solely on its subject matter erases this distinction and thus contravenes *Meyers II*. In addition, the courts of appeals have uniformly rejected the theory of inherently concerted activity; see *Trayco of South Carolina, Inc. v. NLRB*, 927 F.2d 597 (4th Cir. 1991), and *Aroostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209 (D.C. Cir. 1996), and the Court of Appeals for the District of Columbia Circuit has criticized the theory as "nonsensical," "limitless," and having "no good support in the law," *Aroostook County*, 81 F.3d at 214. See *Hoodview Vending*, 362 NLRB No. 81, slip op. at 5–6 (the former Member Miscimarra, dissenting).

[3] We will modify the recommended Order to correct the date of the contingent notice-mailing remedy.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

any other material. If the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 17, 2014."

Dated, Washington, D.C. February 8, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Sally R. Cline, Esq., for the Government.[1]
Jonathan J. Spitz, *Esq.*, for the Company.[2]
Cynthia Johnson, Pro Se[3]

DECISION

STATEMENT OF THE CASE

WILLIAM NELSON CATES, Administrative Law Judge. This case involves the Company's issuing the Charging Party a disciplinary warning on June 17, 2014,[4] and discharging her on July 7, and, its promulgating and maintaining, since June 18, 2012, alleged unlawful rules in its employee handbook restricting employees': social media usage; oral and electronic communication; and, solicitation on company property. It is also alleged the Company, by Area Manager Murillo, during a telephone conversation on July 9 prohibited employees from discussing wages. The cases originate from charges filed by Johnson on July 17 (10–CA–132943) and December 3 (10–CA–142161). The prosecution of the cases was formalized on March 4, 2015, when the Regional Director for Region 10 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued an Order consolidating cases, consolidated complaint and notice of hearing (complaint) against the Company. I heard the cases in trial in Atlanta, Georgia, on July 9, 2015.

The Company in its answer to the complaint, and at trial, denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. The parties entered into a one page written stipulation of facts which was received into the record as a joint exhibit. The Government called one witness and the Company called two witnesses. I carefully observed the demeanor of the three witnesses as they testified and I rely on those observations here. I have studied the whole record, and, based on the detailed findings and analysis below, I conclude and find the Company violated the Act only as indicated.

FINDINGS OF FACT

I. JURISDICTION AND SUPERVISORY AND/OR AGENCY STATUS

The Company, which is a corporation with a principal office and place of business located in Atlanta, Georgia, has been, and continues to be, engaged in the business of automobile title pawn lending. In the past 12 months ending July 31, a representative period, the Company derived gross revenues in excess of $500,000 and purchased and received at its Atlanta, Georgia facility products, goods, and materials valued in excess of $5000 directly from suppliers located outside the State of Georgia. The parties stipulate, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find that Company Area Manager Samantha Murillo (Murillo or Area Manager Murillo), Regional Manager Larry Smith (Smith or Regional Manager Smith), and Branch Managers Quinnience Williams, Ben Raimondi, and Tameka Williams have been, and continue to be, supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act.

II. ALLEGED UNFAIR PRACTICES

Facts

A. The Government's Evidence

Charging Party Johnson worked for the Company for approximately 2 years as a sales representative processing loan applications and performing marketing duties from May 2012 until her termination on July 7. Johnson's immediate supervisor was Mableton, Georgia,[5] store manager, Tameka Williams who reports to Area Manager Samantha Murillo who reports to Regional Manager Larry Smith.

Johnson testified that on May 30, 2 days after her second year with the Company, Area Manager Murillo telephoned instructions on how to repossess a car, something Johnson had

[1] I shall refer to counsel for General Counsel as counsel for the Government and the General Counsel as the Government.

[2] I shall refer to counsel for the Respondent as counsel for the Company and shall refer to the Respondent as the Company.

[3] I shall refer to the Charging Party as the Charging Party or Johnson.

[4] All dates are 2014 unless otherwise indicated.

[5] It is stipulated that in 2013 Johnson worked at the Company's Fulton Industrial Boulevard (Atlanta) location. Johnson raised safety concerns regarding criminal activity at that location. After Johnson raised these issues, she and Branch Manager Quinnience Williams experienced interpersonal problems. The parties *mutually agreed* Johnson would be transferred to the Mableton location, where she would work for a different supervisor. That branch was nearer to her home and she perceived it was a safer area.

not done before. Johnson testified her immediate store manager could not help her with that because her manager "was out again." Johnson testified that near the end of the conversation Murillo told her about her (Johnson's) annual raise. Johnson said Murillo told her she had worked really hard to get Johnson a .03-percent raise and wanted Johnson to know that. Johnson said that because Murillo emphasized the .03-percent amount "something just said, you know, just go have a look at what you got before." Johnson looked and she had received a .05-percent raise the year before. Johnson looked at the Company's handbook and learned she was to be given a yearly performance review which she never had.

Johnson testified she thereafter told Store Manager Williams, who was returning from sick leave, that Area Manager Murillo had informed her that her (Johnson's) raise would be .03 percent. Johnson asked Williams why she had not been getting performance evaluations. Williams did not know.

Johnson testified she spoke by telephone with a couple of unnamed nonsupervisory employees about the handbook. Johnson testified she told them she had been reading the company handbook and they were to receive performance evaluations on which their pay increases were to be determined.[6] Johnson testified she asked the two employees if they knew anything about that, and was told no. Johnson stated one of the two employees told her that he/she had received a .03-percent raise. The employee believed that was the maximum any employee could receive. Johnson told the employee, no, they could get more. Johnson said she also spoke with Store Managers Tameka and Quinnience Williams, as well as, with a store manager named Frank. Johnson testified, "I called them, and I said, you know I read in the handbook that we're supposed to be receiving performance evaluations and that's how our pay is determined." Johnson asked the managers if they knew anything about this. The managers did not know. She also asked if they gave performance evaluations.

Johnson testified she thereafter tried to contact Area Manager Murillo but they missed each other's calls or texts. Murillo ended up calling Johnson asking if someone had called. Johnson responded: "I'm like yes. I said I just need to go over my performance with you, my raise or whatever." According to Johnson, Murillo said okay. Johnson asked Murillo how her evaluation was determined. Johnson testified Murillo told her she did "real good" and was a "good employee." Johnson stated, "I sta[r]ted asking her questions" and "can you explain it. And we went back and forth." Johnson testified Murillo told her about some areas she had never heard of and then "I don't know if she got frustrated, but she was like, well, you chose to move to that location making less." Johnson responded she never chose that location that the Company moved her there because she complained about safety. Johnson told Murillo "and furthermore, I said, they told me that you were moving me over here to help with the sales." Johnson then named all the things she thought improved sales at that location. Johnson testified Murillo "got frustrated and she said, well, it seems to me that you have a sense of entitlement." Johnson told Murillo she did not feel she had a sense of entitlement that she just did not feel proper protocol was followed. Johnson said she told Murillo she had spoken to other employees asking them about performance evaluations and added some of the managers didn't know about the evaluations. Johnson did not tell Murillo which employees she had spoken with. Johnson testified Murillo told her "you're not supposed to be talking to anybody about anything about wages or anything" Johnson explained she believed Murillo was in Macon, Georgia, in a meeting at the time of the call. Johnson told Murillo she was recording their conversation. Murillo responded Johnson was "not suppose to be recording [their] conversation." Johnson told Murillo she had been reading the laws of Georgia and she was allowed to record their conversation because she was a party to it. Johnson testified that near the end of the conversation Murillo told her she was getting off the telephone and for Johnson to "go back to doing your sales job." Johnson said, "I felt like she was trying to demean—just put me down or whatever" and Johnson told Murillo "well, you know, you need to do your job." When Murillo asked what she meant Johnson told Murillo, "you need to do your job. I mean, we have —we're trying to call you when we're doing sales, and you don't answer or anything like that." Johnson said Murillo told her she would be over there the next week to write her up for insubordination.

Johnson testified that after she went home she researched the definition of "insubordination," and prepared, before her meeting with Murillo on June 17, a letter captioned "To Whom This May Concern." The letter, received by the Company on June 18, reads as follows:

General Counsel's Exhibit-4

June 17, 2014

To whom this may concern:

On (date) 6-17-14, Samatha Murillo which is the area manager of Georgia Auto Pawn presented me with a write up "titled first warning." The write up was a reprimand for insubordination. However, I strongly disagree with the charge and contest the false charges against me.
On the day in question, I never disobey an [sic] direct order given by Samatha nor did I ever use any language that the Company or courts would consider vulgar or profane, which are grounds for misconduct and/or insubordination.

I'm requesting that this letter be included in my personel [sic] file along with the formal write up.

Thanks You!
Best Regard
Cynthia Johnson 6/17/14

Johnson said she met with Murillo, along with Store Manager Tameka Williams, and a gentlemen named Ben at the store on June 17. According to Johnson, Murillo asked Williams "to look out for the store" while Johnson and Murillo talked in the back area of the store. Johnson testified Murillo "was already hyped" and wanted to talk about their earlier conversation. Johnson testified Murillo told her "you're not going to be disre-

[6] The employee handbook states, after addressing employee performance reviews that "wage and salary adjustments are based on merit alone, not length of service or the cost of living."

spectful towards me." Johnson denied she was disrespectful stating she "didn't understand how you got the pay that you gave me." Johnson testified Murillo and Ben "pulled up" on the computer numbers for Johnson to review regarding pay. Johnson said she thought the meeting was going to be about insubordination so at that point she pulled out the letter she had written on insubordination the day before. Johnson testified Murillo had an employee counseling form for Johnson with her. Johnson read the form and asked for a copy. Murillo told her she would have to get a copy from payroll. Johnson faxed a written request to payroll for a copy.

The Employee Counseling Form reads as follows:

Employee Counseling Form

Location: GA1486 Date: 6/17/2014 RECEIVED JUN 18 2014

Supervisor's Name: Samantha Murillo, Area Manager PAYROLL

Employee's Name: Cynthia Johnson, Sales Representative

Warning: X Probation

Purpose and Reason for counseling

Insubordination and Failure to Follow Procedure.
On 06/09/2014 at 12:44pm the Area Manager spoke with the Sales Representative mentioned above, Cynthia Johnson. During this conversation the Sales Representative informed the Area Manager that she had spoken with a few other employees Of Georgia Auto Pawn re: her raise being 3% vs the 5% she received the year before. She also informed the Arena Manager That she was recording this conversation. As the conversation was being ended due to the Sales Reps tone becoming agitated And aggressive, she informed the Area Manager that maybe she should do her job and that she should also answer her phone.

Job Expectations and Desired Results

*Employees are expected to speak to their supervisors with a reasonable, respectful, and professional tone and attitude.
*The company's telecommunication systems are to be used for business purposes only. Recording any conversations, in Person or on the phone, will be strictly prohibited. This includes but is not limited to, conversations between co-workers, Customers, or supervisors.
*All employees are required to adhere to company policy for resolving issues by following the proper chain of command.
As discussed, the behavior has negatively impacted the morale of other employees, led to lower productivity, And even loss of customers by our company. This is not acceptable and will not be tolerated any longer.

Any further incidents of insubordination, not following company policy, or company procedures will result in termination.
The employees-handbook can be found on the Start Page>Employee Services>Employee Services Support.

EMPLOYEE TO COMPLETE THE FOLLOWING SECTION

Do you feel your supervisor's expectations are reasonable? YES or **NO**

If NO, please explain: please refer to letter given to Area Manager.
I DO NOT AGREE with Finding /s/ CJ

Employee Signature: ←*employee refused signature*

Supervisor Signature: /s/Samantha Murillo **GC Exhibit 5**
/s/ **6/17/14**

Johnson stated she was away from the store from approximately June 17 until July at which time she tried to speak with someone about the writeup she had been given. Johnson testified she sent an email to Regional Manager Smith on July 7 stating in part: "Please accept this as a request for a one on one meeting with you." Johnson indicated she wanted to discuss the disciplinary action taken against her by Area Manager Murillo on June 17. Johnson testified Smith telephoned her on Monday, July 7, and told her he had been informed by corporate that she had sent an email and he would be over to speak with her that Friday. Johnson testified she told Smith she would like his boss, Hulse, to also be present. She said Smith told her, "no," that he would be the one coming. Johnson testified she told Smith:

> Well, you know, I feel like that we came down this avenue, and I've spoken with you regarding this, you know, incident before, and I would really like Mr. Hulse to come with you?

Johnson said Smith told her, "the chain of command stops with me." She said she would be there on Friday.

Johnson testified Smith came to her store that same day, July 7, but she was at lunch when he arrived. When Johnson returned from lunch Store Manager Williams told her Smith was in the back of the store wanting to speak with her in the manager's office. When Smith saw Johnson he asked if they could speak, which they did.

Johnson testified Smith then told her he had talked to Store Manager Williams about a folder that was on Johnson's desk. Johnson testified Smith told her that Manager Williams had said Johnson had just finished with a customer and went for lunch and would finish with the folder when she came back. Smith asked Johnson if she knew what the policy was for folders. Johnson told Smith she understood folders were to be completed and put away before leaving work. Smith told Johnson she was to finish with a folder before she left at any time, "and going forward that's what you're expected to do." Johnson testified she did not know that was the policy, she thought securing a folder at the end of the day was the policy but going forward she would do as he had instructed.[7]

Johnson testified she asked Smith if they were going to talk about the email she had sent that morning. According to Johnson, Smith said he had read the writeup and he agreed with it. Johnson responded that if they were not going to go over her email what was the point of the meeting and asked if Smith had a copy of the writeup. Johnson testified, "that's when he got frustrated . . ." and repeated he had read and agreed with the write-up and stated, "If you don't like it, get out." Johnson said she was "shocked because I thought that was the point of the meeting." She testified:

> I said, so Larry, you're going to tell me that you can't—were suppose to have a meeting to discuss the email I sent you—and I said, you're not even going to let me talk. I said I feel like you're being unfair and the meeting is pointless. And I said as a matter of fact, I even feel like you're violating my rights."

Johnson stated Smith, "got frustrated" opened the door and said, "You can get out."

Johnson testified Smith then went and sat at her desk. She asked if he was firing her. She said Smith did not respond. Johnson asked for, and received, her purse; shook Smith's hand; thanked him for the opportunity to have a job and left. Johnson said that as she was leaving Regional Manager Smith, "stuck his head out the door" and asked if there was anything she did not understand. Johnson responded she did not know what had just happen, but was he firing her. She said Smith responded he was.

That same evening, July 7, Johnson sent an email to Hulse explaining her work record and how she viewed the Company's treatment of her. Johnson requested to meet with Hulse. In an email to Hulse of July 8, Johnson pointed out the Company was required to provide her a separation notice on the date of her separation or by mail within 3 days of her separation. Johnson requested a separation notice.

Regional Manager Smith provided Johnson a July 8 separation notice reflecting she had been employed by the Company from May 29 to July 7, 2012. The separation notice states Johnson was terminated for "Insubordination [and] failure to follow manager's instructions."

B. The Company's Evidence

Area Manager Murillo, a 5-year employee, manages 13 of the company locations in Georgia including the Fulton Industrial, Atlanta, Georgia, and Mableton, Georgia locations. Murillo reports to Regional Manager Smith. Murillo explained that all locations provide short-term consumer loans on vehicles using the vehicle title as collateral and have two employees at each location; namely, a branch manager and a sales representative. Murillo said Charging Party Johnson, a sales representative, started and first worked at the Fulton Industrial location until December 2013 when she moved to the Mableton location. Murillo met Johnson at the Fulton Industrial location.

Murillo testified that at the end of May she telephoned Johnson at the Mableton location to inform her of a wage increase. Murillo testified: "we discussed the numbers [sales] and the location [Mableton] and what warranted the increase and what her increase [.03 percent] was, and she thanked me for that, and that was the gist of the conversation." Murillo described the conversation, during which nothing else was discussed, as pleasant.

Area Manager Murillo had a second conversation with John-

[7] Johnson acknowledged there had been a previous issue with a folder being left on her desk on July 3. She had an employee counseling form from Area Manager Murillo; however, she said she thought it was just an audit to make sure employees were in compliance with company policy. Johnson explained that on July 3, "I had been working by myself, and I got really busy, so I, like I normally do for a year-and-a-half, I put the folder in my desk so that I could complete it the following day. When I came in that morning, However, Ms. Murillo was already there." Johnson's written protest to the employee counseling reflects she had "never been told that files have to be completed before the end of the day" and she did not agree with the counseling because she had never been told about the Company's system of filing of documents. Johnson acknowledged no mention was made of this incident by Regional Manager Smith in their meeting.

son about Johnson's wage increase in early June. After returning from a "mini-vacation." Murillo telephoned Johnson in response to a voicemail of Johnson's.

Murillo testified:

> "Ms. Johnson was upset that her increase was only .03% that year as opposed to the previous year, which she had informed me it was 5 percent that year. During the conversation, we reviewed the numbers again at her location, and she became angry. As the conversation went on, she became louder and was yelling to the point where at the end of the conversation I had to end it because it just wasn't going anywhere. She informed me that she was recording that phone call."

According to Murillo, Johnson did not mention the Georgia Code when she told her she was recording their conversation. Murillo testified Johnson told her she had asked, "other people" what their raise was and felt she deserved better than average. Murillo said Johnson did not, however, say anything about the other people's pay increases. Murillo testified Johnson did not say anything about the Company's pay system. Murillo stated Johnson continued to get louder and "informed me that I should do my job, that I should answer my phone." Murillo told Johnson she was disrespecting the work place and they would talk later after Johnson cooled down. Murillo denied telling Johnson that Johnson had a sense of entitlement.

Murillo testified she spoke again with Johnson at Johnson's location on June 17. Because their prior telephone conversation had not "gone well" Murillo was hopeful an in-person conversation would go better. Murillo asked a fellow area manager (Ben Raimondi) to go with her and "our hopes were to re-explain again the process in which her raise came about and to discuss how she spoke to me." Murillo testified she did not feel comfortable going alone because of "how defiant she [Johnson] seemed over the phone." Murillo took an employee counseling form with her because she intended to write Johnson up for insubordination during their prior telephone call. Murillo could not recall mentioning her intention to write Johnson up to anyone, but, added; "I may have mentioned it to my boss, Larry Smith, but I don't recall:"

Murillo and Area Manager Ben Raimondi met with Johnson off the sales floor so as to allow Mableton Store Manager Williams to continue to operate the store. Murillo said she did not immediately mention or present the employee counseling form to Johnson because she wanted to talk with her about proper conduct and working well with her coworkers and supervisors. Murillo said, however, that as the conversation progressed Johnson became "rebellious" towards anything I said," "rolling" her eyes and raising her voice so much that Area Manager Raimondi interrupted Johnson telling her she needed to calm down and pull back a little bit. At that point Murillo said she gave Johnson the employee counseling form, allowed her to read it, and, asked if she had anything to say. According to Murillo, Johnson said she was not going to sign it and handed it back to her and asked that her response be submitted with the employee counseling form. Murillo described the tenor of the meeting as "aggressive" explaining "she was yelling," "rolling [her] eyes," "crossing the arms," "lip smacking," and "interrupting my sentences."

Murillo conducted a standard branch audit at the Mableton store on July 3. During the audit Murillo said she discovered incomplete files on Charging Party Johnson's and Mableton Store Manager Williams' desks and gave both of them a coaching form outlining how a file should be put together and what the Company's expectations were regarding the files. Murillo testified that counseling forms are not disciplinary. According to Murillo, Johnson was not happy with the coaching but not nearly as aggressive as she had been during their previous conversations. Johnson made written responses on the counseling form at that time.

Regional Manager Smith, a 12-year employee, is responsible for the Company's operations in Georgia. Six Georgia area managers, including Murillo, report directly to him. Smith has known Charging Party Johnson since a robbery incident occurred at the Company's Fulton Industrial (Atlanta) store. Smith testified Johnson, told store customers and others she did not feel safe after the incident and did not feel the Company was doing enough for her. Smith visited the Fulton Industrial store and asked Johnson "what can I do to make this an environment you can work in?" Smith testified the Company installed lights; a buzzer system on the entrance door; gave employees a medallion to "buzz" people in and out of the store; and, hired a security guard for 2 to 3 weeks at the store. Smith testified the Company was able to satisfy Johnson by transferring her to the Mableton store location, which was closer to her home "and she was happy with that."

Regional Manager Smith testified he next visited with Johnson on July 7. Before Smith visited with Johnson on that occasion he said he received a telephone call from Area Manager Raimondi in which Raimondi told him that he and Area Manager Murillo had visited with Johnson and that Murillo gave Johnson a written counseling form for insubordination. Raimondi told Smith that Johnson had gotten "very loud" and "belligerent" and if he had been her supervisor he would have fired Johnson. Smith said he did not speak with anyone else about going to visit Johnson's store location. Smith specifically testified he did not speak that morning with his supervisor, Hulse, about going to visit with Johnson. Smith also testified that prior to his visiting with Johnson he was not aware she had sent an email to Hulse that morning; in fact, Smith said he was unaware of Johnson's email to Hulse until the trial of this case. Smith further testified he did not speak with Johnson prior to his visit, explaining, "I normally don't tell people I'm going to swing by. I just kind of swing by."

Regional Manager Smith testified he visited the Mableton store at around 3 p.m. on July 7, intending to speak with Johnson about getting along and working with her fellow workers and supervisor. Smith said he wanted to talk with Johnson to inform her he had gotten notice she had been written up, "and that I wanted to make sure . . . we could keep her as a good employee." Smith did not; however, bring with him the June 17 writeup Johnson had been given. Smith explained his visit was not about Johnson's writeup; but, "It was about getting along . . . because . . . she was loud and belligerent to [Murillo] and [Raimondi] had witnessed it and . . . we've got a job to do. Let's try to get along, and let's see what we can do." Smith said he did not intend to take any personnel action that day, nor,

specifically, did he intend to terminate Johnson. Smith testified it was his regular practice prior to terminating an employee that he would prepare a State of Georgia separation notice and "hand" it to the employee so the employee could take it when he/she left the store. Smith took none of those steps before visiting with Johnson on July 7.

Smith testified that when he arrived at the store Johnson was not there; however, he noticed an incomplete file on her work desk with "personal" and "confidential" information including "a customer's personal financial information." Smith was concerned that with "privacy laws nowadays" nothing should be left out on a desk especially where, as here, the desk was accessible to anyone visiting the store. Smith acknowledged he probably was aware of a July 3 audit Area Manager Murillo had conducted at that store at the time he visited.

According to Smith, Johnson returned to the store. Smith asked to meet with Johnson in a private office so they could talk about a matter; specifically, he wanted to talk with her about leaving a file on her desk with personal information in it. According to Smith, Johnson responded in a "short" "tart" manner stating, "I'm not discussing that file." Smith told Johnson they needed to discuss it. Smith said Johnson "got really loud and belligerent" that she was not going to discuss it that she wanted to talk about Area Manager Murillo and about Smith's supervisor, Hulse. Smith continued to say he and Johnson needed to talk. Smith testified he again told Johnson to "hold on a second" "we need to discuss this because this information was left out in the lobby, and we can't have that. We need to discuss this." Smith said Johnson responded that she was not going to talk about it, that she only wanted to talk about Murillo and Hulse. Smith testified:

> And I said, Cynthia, this—I'm telling you we need to discuss this file. And she said, no, I want to talk about Samatha Murillo. And I want to talk about Don Hulse. And I go, Samantha [sic], we need to talk about this file. I'm not discussing this file. And then we—that went on for 30 seconds to the point she says I'm not talking to you at all.

Smith said the matter was at a stalemate and he told Johnson "if you choose not to talk about this file, Cynthia, . . . if you're not going to speak, I think you need to leave." Smith said Johnson was "yelling and refused to speak" "crossed her arms and just refused to speak." As Johnson was leaving, Smith asked if she needed anything from her desk. According to Smith, Johnson responded, "No, I've got my shit." Smith asked if there was anything she needed before she left. Johnson asked "Are you firing me?"

Smith specifically testified that nothing was said about Hulse in this conversation other than Johnson's saying she wanted to talk about him. Smith testified Johnson made no comments about complaining to Hulse and made no mention about her wage increase or her prior writeup. Smith said they never talked about insubordination.

After Johnson left Smith asked Alex Reiss, who was in another office, if she heard what had just transpired. Reiss had, and, Smith asked her to prepare a statement which she did. Smith placed Reiss' statement in Johnson's personnel file. Alexandra Reiss, in a separate affidavit given to the Board, indicated she is employed by Automotive Remarketing, Inc., which is engaged in the business of selling repossessed vehicles. Reiss has been employed since March 2014 and has known Johnson during that time. Reiss described her duties as sending and receiving titles, working hand-in-hand with auctions, mailing titles, and other such duties. Reiss stated in her Board affidavit that she worked at the Company's Mableton, Georgia location in an office separate from the Company's sale floor. Reiss is supervised by Paul Keel and not by any supervisors or managers of the Company. Reiss explained in her affidavit that the door to her office is "usually shut" and that in performing her duties she does not have access to the Company's (Georgia Auto Pawn's) customer files. Reiss, in her Board affidavit, states she was present at, and overheard portions of a conversation between Regional Manager Smith and Johnson. Reiss estimated the conversation last approximately 10 minutes. In her Board affidavit Reiss states, "I heard Johnson yelling, but not Smith." Reiss continued, "I heard Johnson curse." In a separate unsworn statement, solicited by the Company while investigating this matter, Reiss stated:

> 07/05/2014
>
> Today, July 7, 2014, Larry Smith came to Georgia Auto Pawn around 3:00pm. He began having a conversation with Cynthia Johnson, to what regards I'm not entirely sure. The week prior Samantha Murillo, the area manager had been by to speak with Cynthia also. That conversation was clearly audible through the door separating us. Cynthia turned very loud and heated in her dealings with Samantha. I myself was under the impression that Ms. Johnson would no longer be with the company after that day. Though the following day she returned to work. Today her conversation with Mr. Smith was no different; she displayed an attitude of refusal and insubordination. She neglected to answer any questions asked or comply enough to have effective communication. That is all I witnessed.

Reiss recalled in her affidavit that Smith asked Johnson something to the effect that if she willing to do something, with Johnson continually saying, "are you firing me." Reiss stated in her Board affidavit that she "did not hear Johnson or Smith say anything about an email." Reiss did not hear Smith say anything about the chain of command stopped with him, nor, did she hear Smith say anything to the effect that he agreed with a writeup, and if Johnson did not like it she could get out. Reiss stated she could not recall Johnson saying anything to the effect she did not want to discuss a file, but did state, "It sounds familiar Johnson saying that she did not want to discuss something, or wanting to discuss something else, but I can't recall any specifics."

After leaving the Mableton store, Smith went to his office and prepared the paperwork, a separation notice, for corporate to send Johnson. Smith said that when he visited the store on July 7, he did not intend to take any personnel action that day, nor, did he intend to terminate Johnson's employment. Smith said Johnson's employment with the Company was, however, terminated on July 7.

C. Discussion of Credibility Resolutions

It is necessary to make certain credibility resolutions.[8] Whether Charging Party Johnson engaged in concerted activity protected by the Act, and, whether concerted activity protected by the Act motivated the Company to issue Johnson a disciplinary warning on June 17, and, to discharge Johnson on July 7, requires credibility determinations.

In making my credibility resolutions I was impacted by impressions I formed while watching the three witnesses; Charging Party Johnson, Regional Manager Smith, and Area Manager Murillo testify. The impressions I gathered were based on a combination of the witnesses overall bearing on the witness stand, as well as, their mannerisms and how they responded to questions they were asked both on direct and cross-examination. I applied my observations as one, among other factors, in deciding whether the witnesses' testimony impressed me as candid, fair, and believable. I note crediting certain testimony will automatically discredit testimony of other witnesses without having to so state. Although I have not commented on every bit of testimony, nor resolved every possible credibility conflict, I have considered all the testimony and made the necessary credibility resolutions. I am not unmindful that sometimes the resolution of credibility conflicts are difficult requiring the trial judge (or a jury) to rely upon a sixth sense and/or instinct in arriving at a resolution of some conflicts leaving open the possibility, small or significant, that the determinations are erroneous. I have no doubt here. I do not need to rely on a sixth sense, or instinct in making the credibility resolutions I make.

I credit the testimony of the Company's two witnesses. Regional Manager Smith, in particular, impressed me as a very credible witness. He answered all questions asked of him and did not have to explain, walk back, or attempt to justify his answers. Simply stated, as I watched him testify and listened to his responses, I was persuaded he was attempting to testify truthfully and candidly. I credit his testimony. Area Manager Murillo also impressed me. She testified in a straight forward and credible manner. I credit her testimony.

A number of places in Charging Party Johnson's testimony, particular on cross-examination, and at other points, in her narration of events, raised concerns as to the reliability of her testimony. For example, Johnson, on cross-examination, testified she told Area Manager Murillo that she (Johnson) was recording their telephone conversation and she (Johnson) had researched Georgia law and knew she was permitted to do so. Johnson however, acknowledged that nowhere in the first affidavit she gave to an agent of the Board did she mention she had told Murillo she was recording their conversation. Johnson acknowledged, on cross-examination, that although she told Murillo she was recording their telephone conversation she really was not. Johnson's explanation was not persuasive that she thought she was recording the conversation in that she held her mobile telephone to the land line she was speaking on thinking it was recording but it was not.

Johnson acknowledged, again on cross-examination, her testimony, that Regional Manager Smith had, on July 7, telephoned her earlier that day to say he was coming to visit with her was not in her pretrial Board affidavit given within 3 weeks of her termination. Charging Party Johnson also acknowledged she did not mention anything in her first pretrial Board affidavit about Regional Manager Smith telling her, on July 7, he had discussed with Hulse an email Johnson had sent to Hulse before Smith and Johnson met that day.

Johnson stated on cross-examination that after Regional Manager Smith spoke with her on July 7, about the safekeeping of a folder left out on her desk, she asked to talk about the email she had sent to corporate. When Johnson was confronted with one of her pretrial Board affidavits in which she had said Smith was the first one who raised talking about the email sent to corporate (Hulse) she explained; "but again, you're right, it [the affidavit] says he raised it right here [her affidavit], and then now I'm saying that I raised it. So it was raised." Johnson then testified "that part" of her Board affidavit, "may not be accurate." Johnson also acknowledged there was nothing in her first pretrial Board affidavit about she and Smith discussing the email. Johnson explained, on cross-examination, that when she gave her second pretrial Board affidavit 6 months after her termination, she remembered more than she recalled in her first pretrial Board affidavit given closer to the time of her termination. Johnson explained she did not include certain information in her first pretrial Board affidavit, "Because the first time I mean, I didn't think it was relevant", but, she added, "The second time I wanted to make sure that I put everything in there." I find Johnson's acknowledgments and attempts to explain everything unfavorable to her away detracted from my being able to rely on her testimony. Johnson's testimony that she remembered more details of events critical here, as additional time lapsed, defies logic.

Johnson's testimony on cross-examination, that she was not frustrated with Area Manager Murillo when Murillo did not return her telephone calls regarding her wage increase does not ring true viewed in the light of Johnson telling Murillo that she should do her job and answer her telephone. Johnson's explanation she was frustrated with Murillo for not returning previous business telephone calls is not persuasive.

Johnson's testimony that Murillo told her that she (Johnson) should not even be talking to her (Murillo) about her (Johnson's) 3-percent wage increase is not persuasive as being truthful because on cross-examination, Johnson acknowledged Murillo was the one that first telephoned Johnson and talked with her about the wage increase. Stated differently, Johnson's contention that Murillo told her she should not even be talking to Murillo about her wage increase defies logic because it was Murillo who raised the wage increase with Johnson in the first place.

The examples above, considered with my observation of her demeanor as she testified, persuades me that I can not, and, I do not, credit her testimony that conflicts with the testimony provided by the Company's two witnesses. Simply stated, Johnson's changes to, in-and-about, her testimony cast grave doubt

[8] No credibility resolutions are necessary regarding the allegations related to certain of the Company's work rules as the language of the rules is not in dispute.

about the accuracy and truthfulness of her testimony.

D. Analysis, discussion and conclusions

1. Discussing wages

It is alleged at paragraph 6 of the complaint that about June 9, Area Manager Murillo, during a telephone conversation, prohibited employees from discussing wages.

Murillo telephoned Charging Party Johnson at the end of May at Johnson's Mableton, Georgia, work location to inform her of her wage increase.[9] The telephone call occurred 2 days after Johnson's second year of employment with the Company. Murillo discussed with Johnson sales numbers for the Mableton location and explained what formed the basis of, or, warranted the amount of the increase Johnson was being given in her annual raise. Murillo told Johnson her increase would be .03-percent. Johnson thanked Murillo. . The exchange was pleasant with nothing else discussed.

After arriving at home that evening (May 30) Johnson reviewed her pay records and determined she had received a 5-percent annual raise the previous year. Johnson, in an effort to determine how her annual raise was lowered, reviewed the Company's employee handbook and noted employees were to be given an annual performance evaluation. Johnson had not previously been given an annual review. When Johnson's supervisor, Mableton Store Manager Tameka Williams, returned from sick leave, Johnson asked why she had not received annual reviews. Williams did not know. Johnson said she thereafter spoke, by telephone, with two employees about the Company's handbook telling them the handbook indicated they were to receive annual performance evaluations on which their pay increases were based. Johnson asked the two employees if they knew anything about evaluations and they did not. Johnson said one of the two employees told her she had received a 3-percent annual raise and thought that was the maximum an employee could receive. Johnson told the employee they could get more. Johnson said she spoke with two store managers in addition to her store manager and they each told her they did not know about the performance evaluations or how the evaluations related to determining employees' annual raises.

Johnson, who was upset with the amount of her annual raise, attempted to telephone and/or text Murillo several times between the end of May and June 9. The two missed each other's calls and texts until Murillo, after returning from a short vacation, telephoned Johnson on June 9 in response to a Johnson voice mail. They spoke. Johnson told Murillo she needed to go over with her Johnson's job performance and the raise amount she had been given. Johnson was upset that her annual raise was only 3-percent rather than the 5-percent increase she received for the previous year. Murillo told Johnson she was a good employee that performed well. Johnson told Murillo she had spoken with other people about their raise and felt she deserved better than average.

Johnson's testimony that Murillo at that point told her she should not be discussing wages with anyone, not even Murillo, was credibly denied by Murillo.

Murillo went over the numbers with Johnson for Johnson's location. Johnson became angry and "became louder and was yelling to the point where at the end of the conversation I [Murillo] had to end it because it just wasn't going anywhere." Murillo told Johnson that they would talk again when Johnson had a chance to cool down. Johnson informed Murillo she was recording their conversation.

Johnson's testimony that she told Murillo she had been reading the laws of Georgia and she was allowed to record their conversation was credibly denied by Murillo. In fact, Johnson never actually recorded the conversation.

Murillo told Johnson that she (Johnson) needed to go back to doing her sales job. Johnson felt that Murillo's emphasizing her "sales job" was an attempt by Murillo to demean or put Johnson down. Johnson told Murillo, "well you know, you need to do your job." Murillo asked Johnson what she meant and Johnson told Murillo; "I said you needed to do your job. I mean we have—we're trying to call you when we're doing sales, and you don't answer or anything like that." Johnson continued to get louder. Murillo told Johnson she would be back later to write her up for insubordination.

In light of the above-outlined facts, I dismiss the complaint allegation that Murillo, on June 9, in a telephone conversation, prohibited employees form discussing wages because no credible evidence was presented to substantiate the allegation.

2. Johnson's June 17 discipline

It is alleged at paragraph 9 of the complaint that the Company issued Charging Party Johnson a disciplinary warning on June 17, because Johnson had engaged in concerted activities with other employees for the purpose of mutual aid and protection by discussing wages, and by protesting the amount of her wage increase.

After work on June 9, Johnson went home and researched the word "insubordination." She then prepared, before the June 17 meeting with Murillo, a "To Whom This May Concern" letter. In the letter Johnson explains that Murillo on "6-17-14" (an inked-in date) presented Johnson a writeup "titled first warning" and Johnson noted it was for insubordination. Johnson strongly disagreed in her letter and asserted the charges were false. Johnson wrote she did not refuse a direct order nor, use profanity which she wrote are grounds for insubordination. Johnson requested her letter be included in her personnel file.

Murillo's credited testimony establishes she and Area Manager Ben Raimondi met with Johnson at Johnson's work location on June 17. The purpose of the meeting was twofold; to re-explain the process that resulted in Johnson's raise and the amount of the raise, and to address how Johnson had spoken to Murillo in their earlier telephone conversation. Murillo took an employee counseling form with her to give to Johnson for insubordination. Murillo did not immediately mention or present the employee counseling form to Johnson because she wanted to talk with Johnson about proper conduct and working well with coworkers and supervisors.

Johnson said Murillo told her she (Johnson) was not going to

[9] As noted elsewhere here I do not rely on the testimony of Johnson if it is contradicted by other testimony. I have, however, set forth and rely on portions of Johnson's account of events, or actions she took, that are not contradicted or disputed.

be disrespectful towards her (Murillo). Johnson contended she was not disrespectful. As the conversation progressed, Murillo credibly testified Johnson became "aggressive," "rebellious," "yelling," "rolling [her] eyes,' "interrupting [her] sentences," "lip smacking" and "crossing [her] arms." Murillo credibly testified Johnson raised her voice so much that area manager Raimondi told Johnson to calm down and pull back a bit. Alexandra Reiss, an employee of Automotive Remarketing, provided a pretrial affidavit to the Board, as well as, an unsworn statement to the Company during the investigation of this case. In her statement to the Company Reiss described Johnson as "very loud and heated in her dealing with [Murillo]. I myself [Reiss] was under the impression that Ms. Johnson would no longer be with the Company after that day." Murillo gave Johnson the employee counseling form at that time, allowing Johnson to read it. Murillo asked Johnson if she had anything to say. Johnson returned the employee counseling form back to Murillo and stated she was not going to sign it. The employee counseling form, set forth in full elsewhere here, reflected the purpose and reason for the counseling was "Insubordination and Failure to Follow Procedure." More specifically, the employee counseling form refers to the early June telephone conversation between Murillo and Johnson noting that Johnson had told Murillo that she had spoken to a few other employees about her annual raise being .03 percent instead of the same as the previous year's .05-percent raise. The employee counseling form indicates Johnson had said she was recording the early June telephone conversation. The employee counseling form also reflects the telephone conversation had to be ended because Johnson's tone became agitated and aggressive and that Johnson told Murillo she should do her job and that she should also answer her telephone. On the employee counseling form Murillo set forth certain job expectations and desired results which were:

> Employees are expected to speak to their supervisors with a reasonable, respectful, and professional tone and attitude
>
> The Company's telecommunication systems are to be used for business purposes only. Recording any conversations, in person or on the phone, will be strictly prohibited. This includes but is not limited to, conversations between coworkers, customers, or supervisors.
>
> All employees are required to adhere to Company policy for resolving issues by following the proper chain of command. As discussed, the behavior has negatively impacted the moral of other employees, led to lower productivity, and even loss of customers by our Company. This is not acceptable and will not be tolerated any longer.
>
> Any further incidents of insubordination, not following company policy, or company procedures will result in termination. The employees-handbook can be found on the Start Page>Employee Services>Employee Services Support.

It is helpful to review certain guidance of the Board and courts regarding concerted activity to include, under what circumstances, it will or will not be protected under the Act. Section 7 of the Act guarantees employees the right to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection. Section 8(a)(1) of the Act makes it an unfair labor practice "for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." For an employee's activity to be "concerted" the employee must be engaged with or on the authority of other employees and not solely on behalf of the employee him/herself. *Meyers Industries (Myers I),* 268 NLRB 493 (1984), and *Meyers Industries (Meyers II),* 281 NLRB 882 (1986). The statue requires the activity under consideration be "concerted" before it can be "protected." *Bethany Medical Center,* 328 NLRB 1094, 1101 (1999). As the Board observed in *Meyers I* "Indeed, Section 7 does not use the term 'protected concerted activities" but only "concerted activity." It goes, without saying, the Act does not protect all concerted activity. In *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), enfd. sub. nom. *Prill v. NLRB*, 835 F.23d 1481 (D.C. Cir. 1987), the Board made it clear that under proper circumstances a single employee could engage in concerted activity within the meaning of Section 7 of the Act. The question of whether an employee has engaged in concerted activity is a factual one based on the totality of the record evidence. See, e.g., *Ewinc v. NLRB*, 861 F.2d 353 (2d Cir. 1988). It is clear the Act protects discussions between two or more employees concerning terms and conditions of employment. Few topics are of such immediate concern to employees as the level of their wages. *Eastex, Inc. v. NLRB,* 437 U.S. 556, 559 (1978). Communications are concerted even if one employee is the speaker and the other employee is merely a listener. The discussion of wages is protected concerted activity because wages are vital, and perhaps the most critical, of terms and conditions of employment and the grist on which concerted activity feeds. *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995), and the cases cited there. The Board has long held, however, that for conversations between employees to be found protected concerted activity, they must look toward group activity, and mere griping is not protected. See *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683 (3d Cir. 1964). Once the activity is found to be concerted activity an 8(a)(1) violation of the Act will be found if, in addition, the employer knew of the concerted nature of the employees activity, the concerted activity was protected by the Act and the adverse employment action at issue (here discipline) was motivated by the employee' protected concerted activity.

Here Johnson discussed her annual wage raise with other employees, as well as some managers. In arriving at this conclusion, I am not unmindful no employees, or for that matter managers, were called to support Johnson's testimony on this point. Nevertheless, Murillo recognized as much by writing in Johnson's employee counseling form that Johnson had told her she had spoken with a few other employees about her annual raise. Johnson said she told at least one of the employees she (the employee) was not limited to a .03% raise. I find Johnson engaged in concerted activity, protected by the Act, and that management, in fact Murillo, was aware of Johnson's activity. I am, however, persuaded that, on this record, the disciplinary action Murillo took was not unlawfully motivated. Here the discipline was given to Johnson as a result of a telephone conversation with Murillo in early June in which Johnson "became

louder and was yelling to the point" where Murillo had to end the conversation. However, before the conversation ended Johnson became offended that Murillo told her to "go back to work doing your sales job." Johnson found Murillo's return to work instruction to be demeaning and a put down so she told Murillo, "well, you know, you need to do your job" and continued that Murillo needed to answer her telephone, and "you need to do your job. I mean, we have—we're trying to call you when we're doing our sales, and you don't answer or anything like that." During the meeting, Murillo discussed with Johnson her annual raise and reviewed the numbers for Johnson at that location which numbers determined the amount of Johnson's raise. Johnson became upset because her raise was .03 percent rather than .05 percent. That is understandable. Johnson's outburst, however, is not understandable and was not provoked by any unfair labor practices on the part of the Company. Johnson simply did not want to be told to return to her sales job work. Instead, Johnson gave Murillo a procedure for Murillo to improve her (Murillo's) job performance in that she (Murillo) should do her own job and answer Johnson's telephone calls. I find Johnson's comments were not just mere disrespect for Murillo's authority when Murillo asked Johnson to return to her sales job but were a willful rebuke, and, a defiant disregard for Murillo's job-related directive to Johnson and interfered with the constituted industrial authority necessary for Murillo to maintain discipline and direct her work force. I find Murillo's disciplinary warning was not unlawfully motivated and dismiss that portion of the complaint.

Although the disciplinary warning given Johnson on June 17 was directed toward Johnson's conduct during the early June telephone conversation between she and Murillo their June 17 face-to-face meeting provides further insight into Johnson's conduct and actions and Murillo's responses thereto.

Murillo and fellow Area Manager Raimondi met with Johnson at the Mableton store location on June 17. Murillo asked Raimondi to go with her because of "how defiant [Johnson] seemed over the phone when they spoke in early June." The credited evidence establishes that Murillo attempted to cover with Johnson proper conduct and working well with her coworkers and supervisors; however, as the conversation progressed, Johnson became "rebellious" toward anything Murillo said raising her voice and "rolling" her eyes. Johnson became so loud that Area Manager Raimondi interrupted Johnson telling her she needed to calm down and pull back a little bit. Murillo described the tenor of the meeting as aggressive stating Johnson was "yelling," "rolling her eyes," "crossing [her] arms," "lip smacking" and "interrupting [Murillo's] sentences." Automotive Remarketing, Inc. employee Alex Reiss, whose work location, is at the Mableton store, but, in a separate area of the store overheard the conversation, which she described as, "clearly audible" and provided a statement to the Company during the investigation of these matters and reported Johnson "turned very loud and heated in her dealings with [Murillo]" and continued, "I, myself, was under the impression that Ms. Johnson would no longer be with the company after that day," but added, "the following day she returned to work."

At this point, Murillo gave Johnson the Employee Counseling Form, described fully elsewhere, to read, and, if she had anything to say about it. Johnson responded she was not going to sign it and gave it back to Murillo. Johnson asked that her written response to the employees counseling form be accepted and submitted to the Company which it was.

3. Johnson's July 7 discharge

It is alleged at paragraph 11 of the complaint that the Company discharged Charging Party Johnson on July 7 because Johnson engaged in concerted activities with other employees by discussing wages and by protesting the amount of her wage increase and because she protested the discipline she was given on June 17.

While the facts are set forth in detail elsewhere here, it is necessary to summarize the pertinent facts at this point. Regional Manager Smith's credited testimony establishes he visited the Mableton store location on July 7. Smith did so because he had received a telephone call form Area Manager Raimondi. Raimondi told Smith he and Area Manager Murillo visited with Johnson at the Mableton store, at which time Murillo gave Johnson an employee counsel form for insubordination and that Johnson had gotten very loud and belligerent and if he had been her supervisor he would have fired Johnson at that time. Smith visited the store that afternoon to speak with Johnson about getting along and working with her coworkers and supervisors. Smith intended to explain to Johnson he knew she had been written up for insubordination and he wanted to make sure they could keep her as a good employee. Smith did not speak that day with his immediate supervisor, Don Hulse, about Smith's plans to visit with Johnson nor was he aware that Johnson had sent an email to Hulse that day, in fact, Smith was not aware of the email until the trial here. Smith did not speak with Johnson prior to his visit because it was not his practice to tell employees he was going to visit their work place on a given day but rather just visited. Smith did not intend to discuss Johnson's prior write-up but planned to ask Johnson to try to get along with others and see if that could be done.

Smith credibly testified it is his practice, if he planned to terminate an employee, to prepare a State of Georgia separation notice and hand it to the employee at the time. Smith made no such preparation here.

Regional Manager Smith credibly testified that upon arriving at the Mableton store Johnson was not there but, he noticed an uncompleted file on Johnson's work desk with personal and confidential information including "a customer's personal financial information." Smith was concerned about privacy laws and that the file was left on the work desk accessible to anyone visiting the Mableton store. Smith was aware that Johnson had been given a counseling on July 3 regarding Johnson's leaving a file folder on her work desk while she was away from the store.

Smith asked Johnson to meet with him in a private office when she returned to the store so they could talk about Johnson leaving a file on her work desk while she was away from the store. Smith credibly testified Johnson responded in a short tart manner that she was not discussing the file. Smith insisted they needed to talk about it resulting in Johnson becoming really loud and belligerent that she was not going to discuss it, that she wanted to talk about Area Manager Murillo and Smith's

supervisor Hulse. Smith asked Johnson to hold on they really needed to discuss this confidential information left out in the lobby area while Johnson was away from the store. Johnson again told Smith she was not going to talk about it she only wanted to talk about Murillo and Hulse. Smith again asked Johnson to talk about the file and Johnson told Smith she was not going to talk with him at all.

Smith credibly testified he recognize the matter was at a stalemate and told Johnson if she chose not to talk about the file, and if she was not going to speak at all, he thought she should leave. Johnson yelled, crossed her arms and refused to speak at all.

As Johnson left the store, Smith asked if Johnson needed anything from her desk and Johnson told Smith, "no, I've got my shit." Johnson wanted to know if she was being fired.

No mention was made at the meeting about Johnson complaining to Hulse regarding her prior discipline or about her wage increase, only that she wanted to talk about Hulse.

Alex Reiss, an employee of Automotive Remarketing, Inc. stated in a pre-trial Board affidavit she overheard portions of the exchange between Smith and Johnson on July 7. Specifically she overheard Johnson "yelling" and "heard Johnson curse," but, not Smith. Reiss in her pretrial Board affidavit said she did not hear anything mentioned about an email.

In considering and deciding whether the Company violated Section 8(a)(1) of the Act when it discharged Johnson on July 7, I apply the Board's analytical framework for mixed or dual motive cases as outlined in *Wright Line*, 251 NLRB 1803 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). To determine whether an employer's adverse employment action violates Section 8(a)(1) of the Act the Government must establish or show, by a preponderance of the evidence, that an employees protected concerted activity was a motivating factor in the employer's adverse action against the employee. If the Government makes the required showing the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the employee's protected concerted activity.

It is established, as set forth elsewhere here, that Johnson engaged in protected concerted activity when she discussed wages, and, her annual wage increase in particular, with some of her co-workers. It is likewise established the Company, Area Manager Murillo in particular, was aware of Johnson's protected concerted activity. However, I am persuaded, on this record, the government has failed to establish the Company harbored animus towards Johnson's protected concerted activity. For example the evidence establishes that the discipline on the Employee Counseling Form given Johnson on June 17, prior to her discharge on July 7, was for insubordination and not based on Johnson's concerted activity of protesting her annual wage increase or discussing wages with coworkers. Johnson's immediate supervisor, Murillo, in discussions with Johnson, did not tell or instruct Johnson she should not discuss wages with co-workers or even with management. There is no credible evidence that Regional Manager Smith harbored animus against Johnson's protected concerted activities. I conclude and find the government has not established that Johnson's protected concerted activity was a motivating factor in her discharge and I dismiss that allegation.

Even if I conclude the Government established the elements of a prima facia case under *Wright Line,* I would nonetheless conclude the Company met its burden of establishing it would have taken the same action even in the absence of Johnson's protected concerted activity

The credible evidence establishes that Area Manager Smith went to Johnson's work location, unannounced, on July 7, to talk with Johnson about getting along with her coworkers and supervisors. After he had been alerted by an area manager of Johnson's earlier insubordination toward Area Manager Murillo; Smith simply intended to explain to Johnson he knew she had been written up for insubordination and wanted to see if the Company could keep her on as a good employee. Smith did not know of, nor considered, an email, Johnson had sent to Smith's supervisor Hulse earlier that day about her discipline. When Smith arrived at Johnson's work location site, Johnson, was not there. Smith observed a file on Johnson's desk that contained confidential and financial information about a customer. That resulted in Smith's desire to discuss with Johnson the safekeeping of customers files containing confidential information by securing the files when she was not present at her desk or work area that was open to the public visiting that store. Smith repeatedly asked Johnson to speak with him about the safekeeping of confidential files, but, Johnson in a "loud" and "belligerent" manner refused to do so saying she only wanted to talk about Murillo and Hulse. Smith continued to ask Johnson to discuss files being left on her desk unsecured when she was not at her desk nor in her work area. Johnson yelled, crossed her arms and refused to even speak with Smith at all. It was at this point that Smith told Johnson if she was not going to speak at all she should just leave. I am persuaded Smith terminated Johnson because she refused to even speak with him about a matter critical to her job duties. This was a defiant disregard for a job-related directive by Smith to Johnson. Perhaps Johnson did not want to discuss leaving customer files on her desk when she was not there because she, admittedly, had been counseled on that very issue less than a week before this incident. There was no mention between Smith and Johnson of Johnson's complaining to Hulse about her prior discipline, or, her wage increase, only that she wanted to talk about Hulse. Automotive Remarketing employee Alex Reiss, who overheard portions of Smith's and Johnson's exchange, heard Johnson yelling and cursing. I am fully persuaded the total record evidence demonstrates the Company met its burden of establishing it would have discharged Johnson even in the absence of any protected concerted activity on her part. Finally, I note that if Johnson's discharge had been preplanned by Smith, he would have, as was his practice, brought with him to his meeting with Johnson, a State of Georgia termination notice, which he did not.

In summary, I dismiss the complaint allegation that the Company discharged Johnson in violation of Section 8(a)(1) of the Act.

E. The Company Rules

It is admitted the Company, on or about, June 18, 2012,

promulgated, issued, and since then has maintained an employee handbook that, among other rules, contains the following: (a) COMMUNICATION: Employees are not to participate in the spreading of malicious gossip or rumors, creating general discord, interfering with the work of another Employee(s), willfully restricting work output or encouraging others to do so. (b) SOLICITATION ON COMPANY PROPERTY:. . .Solicitation by Employees on Company property is prohibited. Distribution of literature by Employees is also prohibited. (c) ELECTRONIC COMMUNICATION: The Company's…email…[is] part of the Company's business equipment and should be used for Company purposes only. (d) SOCIAL MEDIA POLICY:. . . Social media should never be used in a way that:—defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors, etc.—harasses other employees or customers. (e) … Beyond the profile information described above, you may not mention anything else in a social networking environment about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies. (f) . . . You should not post any photographs of company property, interior or exterior.

The Government contends each, or portions of each of these rules, interferes with employees Section 7 rights and violate Section 8(a)(1) of the Act.

Section 7 of the Act states; "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." Section 8 of the Act states; "It shall be an unfair labor practice for an employer—'(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7'."

First, in determining whether the maintenance of a work rule violates Section 8(a)(1) of the Act the Board's analytical framework set forth in *Crowne Plaza Hotel,* 352 NLRB 382, 383 (2008), quoting from *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004), is utilized:

> [A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. Id at 825, 827. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful.
>
> If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).

Where a rule is ambiguous regarding its application to Section 7 activity and no examples of violative conduct or limitation language is set forth that would clarify to employees the rule does not restrict Section 7 rights such a rule is unlawful under the Act.

The Board noted in *Flex Frac Logestics, LLC*, 358 NLRB 1131, 1132 (2012); enfd. 746 F.3d 205 (5th Cir. 2014).

> Board law is settled that ambiguous employer rules—rules that reasonably could be read to have a coercive meaning—are construed against the employer. This principle follows from the Act's goal of preventing employees from being chilled in the exercise of their Section 7 rights—whether or not that is the intent of the employer—instead of waiting until that chill is manifest, when the Board must undertake the difficult task of dispelling it.

1. The Communication rule

The first rule does not explicitly reference Section 7 activity. As noted elsewhere here, the rule states:

> "Employees are not to participate in the spreading of malicious gossip or rumors, creating general discord, interfering with work of another employee[s], willfully restricting work output or encouraging others to do so."

As already noted, an employer rule is unlawfully overbroad when employees would reasonably interpret it to encompass protected activities. An employee would reasonably interpret the Company's rule "creating general discord" as proscribing employees from complaining about working conditions or candidly expressing any dissatisfaction with working conditions or rules. Additionally, employees could reasonably interpret "willfully restricting work output or encouraging others to do so" to prohibit them from legitimately discussing the values, or drawbacks, from engaging in a lawful strike. Simply stated, employees would reasonably understand these restrictions to interfere with their rights protected by Section 7 of the Act. Stated differently, when an employer blanketedly bans negative or inappropriate discussions among its employees without clarification, employees will reasonably read such rules to prohibit discussion, interaction, vigorous debate or intemperate comment, rights, protected by Section 7 of the Act. See *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 7 (2014); and, *First Transit, Inc.*, 360 NLRB No. 72, slip op. at 2–3. See also *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 1 (2014). I find this rule interferes with employees Section 7 rights and violates Section 8(a)(1) of the Act.

2. Solicitation and distribution rule

The rule "solicitation by employees on Company property is prohibited. Distribution of literature by employees is also prohibited" explicitly restricts Section 7 rights and is unlawful. Stated differently, this blanket prohibition against soliciting and distributing on Company property is unlawful because employees have a Section 7 right to solicit on nonworktime and to distribute in nonwork areas. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).

3. The email rule

Whether this rule, "The Company's . . . email . . . [is] part of the Company's business equipment and should be used for Company purposes only," interferes with employees Section 7 rights in violation of Section 8(a)(1) of the Act is determined by the analytical framework for evaluating employees' use of their employer's email systems outlined in *Purple Communications, Inc*., 361 NLRB No. 126 at slip op. 1 (2014). Excerpts from *Purple Communications* follows:

> At issue in this case is the right of employees under Section 7 of the National Labor Relations Act to effectively communicate with one another at work regarding self-organization and other terms and conditions of employment.[1] The workplace is "uniquely appropriate" and "the natural gathering place" for such communications,[2] and the use of email as a common form of workplace communication has expanded dramatically in recent years. Consistent with the purposes and policies of the Act and our obligation to accommodate the competing rights of employers and employees, we decide today that employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems. We therefore overrule the Board's divided 2007 decision in *Register Guard*[3] to the extent it holds that employees can have no statutory right to use their employer's email systems for Section 7 purposes.[4] We believe, as scholars have pointed out,[5] that the *Register Guard* analysis was clearly incorrect. The consequences of that error are too serious to permit it to stand. By focusing too much on employers' property rights and too little on the importance of email as a means of workplace communication, the Board failed to adequately protect employees' rights under the Act and abdicated its responsibility "to adapt the Act to the changing patterns of industrial life."[6]
>
> Our decision is carefully limited. In accordance with longstanding Board and Supreme Court precedent, it seeks to accommodate employees' Section 7 rights to communicate and the legitimate interests of their employers.[7] First, it applies only to employees who have already been granted access to the employer's email system in the course of their work and does not require employers to provide such access. Second, an employer may justify a total ban on nonwork use of email, including Section 7 use on nonworking time, by demonstrating that special circumstances make the ban necessary to maintain production or discipline. Absent justification for a total ban, the employer may apply uniform and consistently enforced controls over its email system to the extent such controls are necessary to maintain production and discipline. Finally, we do not address email access by nonemployees, nor do we address any other type of electronic communications systems, as neither issue is raised in this case.

1) Employees' exercise of their Sec. 7 rights "necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite." *Beth Israel Hospital v. NLRB,* 437 U.S. 483, 491–492 (1978)
2) *NLRB v. Magnavox Co. of Tennessee*, 415 U.S. 322, 325 (1974), *Eastex, Inc. v. NLRB,* 437 U.S. 556, 574 91978); *Beth Israel,* 437 U.S. at 505.
3) *Register Guard*, 351 NLRB 1110 (2007), enfd in relevant part and remanded sub nom. *Guard Publishing v. NLRB,* 571 F.3d 53 (D.C. Cir 2009).
4) The Respondent maintained an electronic communications policy limiting employee use of its email and other electronic systems to "business purposes only" and "specifically prohibit[ing] certain uses by employees. Acknowledging that the Respondent's policy comports with current law, the General Counsel and the Charging Party ask the Board to overrule Register Guard and find that the Respondent's policy violates the Act.
5) See, e.g., *Jeffrey M. Hirsch, communication Breakdown: Rivivving the role of Discourse in the Regulations of Employee Collective Action*, 44 U.C. Davis L. Rev. 1091, 1151 (2011) ("[T]he regulation of workplace discourse has become so far adrift that the NLRB now views email as an affront to employer interests, rather than a low-cost, effective means for employees to exercise their right to collective action."); William R. Corbett, *Awakening Rip Van Winkle: Has the National Labor Relations Act Reached a Turning Point?,* 9 Nev. L.J. 247, 252 (2009) (*Register Guard* "elevated employers' property interests over employees' rights, and interpreted the NLRA in a restrictive way that threatens to make it irrelevant and obsolescent"); Christine Neylon O'Brien, *Employees On Guard: Employer Policies Restrict NLRA-Protected Concerted Activities On E-Mail,* 88 Ore. L. Rev. 195, 222 (2009) (*Register Guard's* overemphasis on the employer's property interests at the expense of the employees' section 7 rights undermines the credibility of the majority opinion"); Dube, *Law Professors Speaking at ABA Conference Criticize NLRB's Register-Guard Decision,* BNA Daily Labor Report (May 6, 2008).
6) *Hudgens v. NLRB*, 424 U.S. 507, 523 (1976) (citing *NLRB v. J Weingarten Inc.,* 420 U.S. 251, 266 (1975)).
7) *Hudgens v. NLRB, 424, U.S. at 521* ("Accommodation between employees'§ 7 rights and employers' property rights. . . . 'must be obtained with as little destruction of one as is consistent with the maintenance of the other'") (quoting *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956)). See also *Republic Aviation*, 324 U.S. 793, 803 fn. 10 (1945) (quoting *Peyton Packing Co*., 49 NLRB 828, 843–844 (1943)).

Applying the above extended guidance I note employees here already have access to the Company's email system for work purposes. From that I conclude the employees have a right to use the email system to engage in Section 7 protected communications on nonworking time. The Company presented no evidence demonstrating that special circumstances existed in order to maintain production or discipline that would justify restricting its employees' rights. Accordingly, I find the Company's rule limiting the use of its email system to company purposes only infringes upon employees' Section 7 rights and violates Section 8(a)(1) of the Act.

4. Social media policies

I next consider the various portions of the Company's social media policy namely: ". . . Social Media should never be used in a way that: defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors, etc.; [and/or that] harasses other employees or customers." The social media policy continues further ". . . beyond the profile information described above, you may not mention anything else in a social networking environment

about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies, [and] you should not post any photographs of company property, interior or exterior.

It is clear employees would reasonably construe the rule language here to prohibit Section 7 activity. Rules that can reasonably be read, as here, to prohibit protected concerted criticism of an employer will be found unlawfully overbroad. A rule that prohibits employees from engaging in disrespectful, negative, rude or even somewhat inappropriate language towards an employer or management, absent sufficient clarification or context, will usually be found unlawful. See, e.g., *Casino San Pablo,* 361 NLRB No. 148, slip op. at 3 (2014). Employees here would reasonably conclude that the rule requires them to refrain from engaging in certain protected communications such as those critical of the employer or its agents. The Company's instruction that its employees not mention anything else in a social networking environment about the Company, its business operations, finances, products or services, relationships with customers, third party or agencies would be interpreted as prohibiting employees from discussing and/or disclosing information regarding their own conditions of employment, as well as the conditions of employment of employees other than themselves—activities clearly protected by Section 7. The Company's social media policy that "you [employees] should not post [on social media] any photographs of Company property, interior or exterior" reasonably tends to chill employees in the exercise of their Section 7 rights. Employees could reasonably believe that photographing concerted protected activities such as unsafe working conditions inside the property or protesting working conditions outside of, but next to, company property are prohibited. This facially overly broad rule would tend to chill employees in the exercise of their Section 7 rights and, consequently, violate Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Georgia Auto Pawn is, and has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Company by, since on/or about June 18, 2012, restricting its employees' Section 7 rights, has violated Section 8(a)(1) of the Act by maintaining the following overly broad work rules:

(a) That prohibits employees from participating in the spread of gossip or rumors, creating general discord, interfering with the work of another employee(s), willfully restricting work output or encouraging others to do so.

(b) That prohibits all solicitation and distribution by employees on Company property.

(c) That unlawfully interferes with employees' use of the Company's email system for Section 7 purposes.

(d) That prohibits use of social media in a way that defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors and that prohibits mentioning anything else in a social networking environment about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies and that prohibits the posting of any photographs of company property, interior or exterior.

3. The unfair labor practices of the Company affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that certain rules in the Company's employee handbook infringes on its employees' Section 7 rights, I recommend the Company be ordered to rescind the following rules identified here in abbreviated form but described fully elsewhere in this decision that addresses; (1) gossip and general discord; (2) solicitation and distribution; (3) use of company email for Section 7 purposes; and, (4) use of social media that defames or disparages the Company and that prohibits the posting of any photographs of company property. The Company may comply with this order by furnishing employees with inserts for the current employee handbook that (1) advises that the unlawful provisions have been rescinded, or (2) provides lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions. Additionally, I recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

ORDER

The Company, Georgia Auto Pawn, Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an overly broad Communication rule that prohibits employees from "participating in the spreading of malicious gossip or rumors, creating general discord, interfering with the work of another employee(s), willfully restricting work output or encouraging others to do so" that interferes with the Section 7 rights of employees to engage in union and/or protected concerted activity.

(b) Maintaining an overly broad solicitation on company property rule that prohibits all solicitation and distribution by employees on Company property.

(c) Maintaining an overly broad electronic communication policy rule that unlawfully interferes with employees' use of the Company's email system for Section 7 purposes.

(d) Maintaining an overly broad social media policy rule that prohibits use of social media in a way that defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors and that prohibits mentioning anything else in a social networking environment about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies and that prohibits the posting of any photographs of company property, interior or exterior, that interferes with the Section 7 rights of employees to engage in union and protected concerted activity.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the Board's Order rescind or revise the overly broad rules contained in its employee handbook listed in 1 (a), (b), (c), and (d) of this Order.

(b) Furnish employees with inserts for the current employee handbook that (1) advises that the unlawful provisions (listed in 1 (a), (b), (c), and (d) of this Order) have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised employee handbooks that (a) do not contain the unlawful provisions, or (b) provide language of lawful provisions.

(c) Within 14 days after service by the Region, post at its Atlanta, Georgia facilities copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. If the Company has gone out of business or closed a facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since June 18, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Those allegations of the complaint not found to violate the Act are dismissed.

Dated, Washington, D.C October 21, 2015

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overly broad rule that prohibits employees from participating in the spreading of gossip or rumors, creating general discord, interfering with the work of another employee(s), willfully restricting work output or encouraging others to do so that interferes with the Section 7 rights of employees to engage in union or protected concerted activity.

WE WILL NOT maintain an overly broad rule that prohibits all solicitation and distribution by our employees on our property.

WE WILL NOT maintain an overly broad rule that unlawfully interferes with our employees' use of the Company's email system for Section 7 purposes.

WE WILL NOT maintain an overly broad rule that prohibits the use of social media that defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors and that prohibits mentioning anything else in a social networking environment about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies and that prohibits the posting of any photographs of company property, interior or exterior that interferes with the Section 7 rights of employees to engage in union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our overly broad rule that prohibits employees from participating in the spreading of gossip or rumors, creating general discord, interfering with the work of another employee(s), willfully restricting work output or encouraging others to do so that interferes with the Section 7 rights of employees to engage in union or protected concerted activity.

WE WILL rescind our overly broad rule that prohibits all solicitation and distribution by our employees on our property.

WE WILL rescind our overly broad rule that interferes with our employees' use of the Company's email system for Section 7 purposes.

WE WILL rescind our overly broad rule that prohibits the use of social media that defames or disparages the Company, its affiliates, officers, employees, customers, business partners, suppliers, vendors and that prohibits mentioning anything else in a social networking environment about the Company, or its business operations, finances, products or services, relationships with customers, third parties, or agencies and that prohibits the posting of any photographs of company property, interior or exterior.

WE WILL furnish you with inserts for our current Employee Handbook that (1) advises that the overly broad rules found to be unlawful have been rescinded, or (2) provide lawfully worded rules on adhesive backing for those rules found unlawful; or WE WILL publish and distribute to you revised employee handbooks that (1) do not contain the rules found unlawful, or (2)

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that provides lawfully worded rules.

GEORGIA AUTO PAWN

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-132943 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.